IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL ST.NO.232 OF 2006
WITH
CIVIL APPLICATION NO.19 OF 2006

Prakash Premjibhai Bhatkar .. Applicant.
Vs.
Manisha Prakash Bhatkar .. Respondent.

Mr.P.V.Samant for the applicant.
Mr.Nitin Trivedi for the respondent.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, J.

DATED : 3RD MARCH 2006.

P.C.:

. The petitioner in M.J.Petition No.A-1913 of 2004 has filed this appeal being aggrieved by the judgment and order dated 20.10.2005 passed by the Family Court, Mumbai whereby the marriage between him and respondent-wife is ordered to be dissolved by decree of divorce. The Family Court has observed that the minor child shall remain in the custody of the mother and the appellant shall have access to the child on first and third saturday of every month in between 12.00 noon and 2.00 p.m. of the Family Court. The Family Court has further observed that the appellant shall pay Rs.4,500/- per month towards the maintenance allowance of the respondent and the minor child with effect from

6.1.2005. The appellant is also directed to clear all the arrears of maintenance within three months and he is directed to pay monthly maintenance.

2. We have heard learned counsel for the appellant and the respondent. The learned counsel for the appellant states on instructions of the appellant who is present in the Court that so far as the Family Court's order dissolving the marriage is concerned, the appellant has no grievance and he does not want to press the appeal on that count. On instructions, from him the learned counsel further states that the appellant has agreed for final disposal of the present appeal. Hence we have heard this appeal for final disposal at the stage of admission.

3. The only issue which needs to be dealt with is of maintenance. The learned counsel for the appellant contended that the appellant's take home salary is Rs.9,695/-. He submitted that the appellant has taken L.I.C. policy and has to pay premium of Rs.542/- per month. The appellant has also taken loan for purchasing flat and has to pay monthly instalment and, therefore, the net balance from take home salary which remains with him after deducting his expenses is only Rs.2,727/-. The

learned counsel contended that, therefore, the Family Court order directing the appellant to pay an amount of Rs.4,500/- per month to the respondent and the minor child needs to be set aside as the amount awarded is exorbitant considering the meagre amount which the appellant takes home every month.

4. We are unable to agree with the learned counsel for the appellant. Admittedly, the respondent is not working. The minor child is three and half years old. He is a school going child. We can take judicial note of the steep rise in the prices. The expenses of minor child are likely to increase as he pursue higher studies. It is true that as per payslip of the appellant his take home salary is Rs.9,695/-. However, we are not impressed by the submission that because the applicant has to pay premium of L.I.C. policy and instalment of housing loan he should be absolved of his responsibility to maintain his wife and child. Our attention has been drawn by the learned counsel for the respondent to the observation of the Family Court that the appellant has obtained loan for purchasing flat in June 2004 and he has taken policy from L.I.C. on 5.11.2003. Admittedly, the notice for maintenance was served on 1.4.2003, and instant petition came to be filed on 3.11.2004.

It, therefore, appears that the L.I.C. policy was taken and the loan was obtained to frustrate the respondent's right of maintenance. We concur with the Family Court on this aspect. In our considered opinion, in the facts and circumstances of the case, it cannot be said that the appellant is not possessed of sufficient means. We are aware that the financial position of the father of the appellant may not have direct relevance to his liability to pay maintenance to his wife and child but we will certainly take note of the fact that the appellant's father is working in B.E.S.T. Mumbai and is likely to get retiral benefits. Therefore, one cannot say that the appellant is saddled with responsibility of looking after financial need of his father. We may also note that the loan documents of ICICI bank, from which the appellant has taken loan for the flat, show that the co-applicant is his mother Jashoda Premji Bhatkar. If that is so it is possible that burden of repaying the loan may also be borne by his father, who is employed in B.E.S.T. Mumbai. This is certainly not a family which is hard pressed for money. The appellant is an able bodied person and cannot avoid liability of maintaining his wife and child. We find that the reasoning of the Family Court on this aspect of the matter cannot be

faulted on any count and we concur with it. In the circumstances we find no merit in the appeal. The appeal is dismissed. Needless to say that in view of the dismissal of the appeal the civil application stands dismissed. The appellant shall clear all the arrears of maintenance within a period of two weeks from today. If the appellant fails to pay maintenance amount as ordered by us, the respondent-wife will have liberty to approach the department, where he is working with the copy of this order requesting the department for deduction of maintenance amount from his salary. The appeal as well as the civil application stand disposed of in the aforestated terms.

(Smt.Ranjana Desai,J.)

(D.B.Bhosale, J.)